FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION NO.1896/2007.

Naresh Kisan Meshram..vs.. State of Maharashtra.

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is the second application.

3. Learned counsel for the applicant-Naresh stated that there is a change in the circumstances. When asked what is the change in the circumstances, the learned counsel relied upon a decision of the Supreme Court, reported in A.I.R. 1982 SC 1228 (Shambhu Kuer ..vs.. State of Bihar). He submitted that the present applicant had not assaulted at all and therefore, he cannot prima facie be held guilty of offence punishable with death or imprisonment for life i.e. under Section 302 of Indian Penal Code.

4. In fact, the learned counsel was unable to narrate before the court any change in circumstances. It has already been discussed by this court that the present applicant had caught hold of the neck of the deceased and facilitated the attack by the other accused. In the reported case, it is observed by Their Lordships that when the applicant-Shambhu had caught hold of deceased, there was a scuffle, the deceased got himself released and thereafter one Mandip assaulted him. It is, therefore, obvious that it is after the deceased got himself released that Mandip assaulted him and therefore the applicant-Shambhu was held to be not liable for offence under Section 302 read with Section 34 of Indian Penal Code. In the present case, however, it is not shown that the

deceased had got himself released and thereafter the other accused had assaulted. The statements go to show that while deceased was still under the clutches of the present applicant, he was assaulted with knife. In view of the fact that there is no change in the circumstances, the application is rejected.

JUDGE

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